



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: William Hunter and Associates

File: B-235123; B-235164

Date: June 20, 1989

DIGEST

1. Protest against agency's determination to exclude offeror from the competitive range is untimely where it was not filed within 10 working days after the protester learned of the exclusion and the basis for the exclusion.
2. Protest allegations challenging awards to offerors are dismissed where protester would not be in line for award if allegations were resolved in its favor, and protester therefore is not an interested party.

DECISION

William Hunter and Associates protest its exclusion from the competitive range and the award of contracts to H.L. Jackson Real Estate Co. and Judge Fite Realty under request for proposals (RFP) Nos. 32-88-113N (for Dallas Area 2), and 33-88-113N (for Dallas Area 3), respectively, issued by the Department of Housing and Urban Development (HUD) for area management broker (AMB) services. We dismiss the protests.

On October 5, 1988, HUD issued the RFPs to acquire AMB services for two separate geographic areas surrounding Dallas, Texas. AMB's provide management and related services including inspections, appraisals, estimates, oversight of minor repairs, and collection of rents for single family properties owned by or in the possession of the Secretary of HUD. The closing date for both RFPs was November 7, and a preproposal conference for both RFPs was held on October 18.

Hunter received HUD's written notification of its exclusion from the competitive range on February 22, 1989, for Dallas Area 2 and on February 25 for Dallas Area 3. Contracts were awarded on March 15 for Dallas Area 2 and April 5 for

045795/138952

Dallas Area 3. On April 10, Hunter protested to our Office the Dallas Area 2 award and on April 11, the Dallas Area 3 award.

Hunter contends that inaccurate and confusing information inconsistent with the RFP was dispensed at the preproposal conference, that its proposals either equal or exceed RFP evaluation criteria and cost less than the awardees', and that HUD was biased in favor of the awardees.

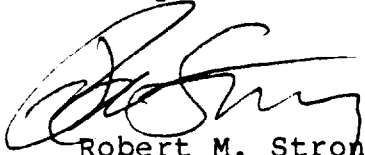
To be timely, a protest based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of proposals must be filed before that date. 4 C.F.R. § 21.2(a)(1) (1988). Thus, to the extent that Hunter considered the RFPs unclear or ambiguous as a result of remarks made at the preproposal conference, it was required to protest this alleged solicitation deficiency prior to the November 7 closing date. Since Hunter did not protest to our Office until April 10 and 11, this portion of Hunter's protest is untimely and will not be considered.

Hunter's allegations that its proposals either equal or exceed RFP evaluation criteria are also untimely under our Bid Protest Regulations, which provide that a protest based on other than an apparent impropriety in the solicitation must be filed within 10 working days after the protester knows the basis for the protest. 4 C.F.R. § 21.2(a)(2). As Hunter received HUD's written notification of its exclusion from the competitive range on February 22 for Dallas Area 2 and on February 25 for Dallas Area 3, its protest grounds regarding the rejection of its proposals, filed more than 6 weeks later, are untimely. See Scholarly Publications, B-230745.2, Aug. 30, 1988, 88-2 CPD ¶ 191. Though Hunter states in its comments that its protests are timely because "in a service type contract you do not have a basis, for protest until the contract is awarded", we fail to see, and Hunter does not explain, how the type of contract is relevant to the time it learned its basis of protest that HUD unfairly evaluated its proposals because they equaled or exceeded the evaluation criteria.

Since Hunter's proposals were determined to be outside of the competitive range and Hunter has not timely challenged the rejections, the firm would not be in line for award of these contracts even if it were to prevail in its protests of the awards to H.L. Jackson and Judge Fite. Hence, Hunter is not an interested party eligible to challenge the awards under 4 C.F.R. § 21.0(a), and we therefore will not

consider the remaining aspects of its protests. DeCamp-
Brown & Assocs., B-231397, June 10, 1988, 88-1 CPD ¶ 559.

The protests are dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name.

Robert M. Strong
Associate General Counsel